United States Department of Labor Employees' Compensation Appeals Board

A.W., Appellant))
and) Docket No. 13-95) Issued: April 17, 2013
U.S. POSTAL SERVICE, POST OFFICE, Chicago, IL, Employer)))
Appearances: Alan J. Shapiro, Esq., for the appellant Office of Solicitor, for the Director	Case Submitted on the Record

ORDER REMANDING CASE

Before: RICHARD J. DASCHBACH, Chief Judge COLLEEN DUFFY KIKO, Judge PATRICIA HOWARD FITZGERALD, Judge

On October 18, 2012 appellant, through her attorney, filed an application for review of a September 19, 2012 Office of Workers' Compensation Programs' (OWCP) decision denying her request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a). The appeal was docketed as 13-95.

The Board notes that the most recent merit decision issued by OWCP is a January 24, 2012 decision denying appellant's claim for a recurrence of disability for periods beginning January 3, 2009. In the instant case, appellant, through counsel, requested reconsideration in a letter dated February 7, 2012 and received by OWCP on February 10, 2012. She also submitted medical evidence in support of her request. OWCP did not issue a decision on appellant's request for reconsideration until September 19, 2012, more than seven months after the request was made. OWCP's procedure manual provides, "When a reconsideration decision is delayed beyond 90 days, and the delay jeopardizes the claimant's right to review of the merits of the case by the Board, OWCP should conduct a merit review. That is, the basis of the original decision and any new evidence should be considered and, if there is no basis to change the original

¹ OWCP accepted that on October 3, 2001 appellant, a mail carrier, sustained a lumbar sprain at work. Appellant returned to regular duty but later claimed that she sustained a recurrence of disability for periods beginning January 3, 2009 due to her October 3, 2001 work injury. In decisions dated August 2, 2011 and January 24, 2012, OWCP denied appellant's claim on the grounds that she did not submit sufficient medical evidence to show that she sustained a recurrence of disability for periods beginning January 3, 2009 due to her October 3, 2001 work injury.

decision, an order denying modification (rather than denying the application for review) should be prepared. There is no obligation to conduct a merit review on insufficient evidence if the maximum 180-day time limit for requesting review by the Board will have expired within the 90-day period following the OWCP's receipt of the claimant's reconsideration request."²

The Board finds that OWCP's delay of more than seven months in issuing a decision on appellant's reconsideration request effectively precluded appellant from appealing OWCP's most recent merit decision on her claim to the Board.³ Had OWCP acted upon appellant's request within 90 days, appellant would have been able to seek review of OWCP's January 24, 2012 merit decision before the Board.⁴

Accordingly, the case will be remanded to OWCP to issue an appropriate decision on the merits of the claim in order to preserve appellant's appeal rights.

IT IS HEREBY ORDERED THAT the September 19, 2012 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further action consistent with this order.

Issued: April 17, 2013 Washington, DC

> Richard J. Daschbach, Chief Judge Employees' Compensation Appeals Board

> Colleen Duffy Kiko, Judge Employees' Compensation Appeals Board

> Patricia Howard Fitzgerald, Judge Employees' Compensation Appeals Board

² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.7 (October 2011).

³ See 20 C.F.R. §§ 501.2(c) and 501.3. For OWCP decisions issued on or after November 19, 2008, the Board only has jurisdiction to consider an appeal from a final decision of the OWCP that is filed within 180 days of such OWCP decision.

⁴ Geoma R. Munn, 50 ECAB 242 (1999); Debra E. Stoler, 43 ECAB 561 (1992); Carlos Tola, 42 ECAB 337 (1991) (remanding cases for merit review where OWCP delayed issuance of reconsideration decisions).